

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Plaintiff,

v.

ZYNGA INC.,

Defendant.

Civil Action No. 22-590-GBW

ORDER

At Wilmington, this 29th day of August 2024:

For the reasons set forth in the Memorandum Opinion issued this day, **IT IS HEREBY ORDERED** that:

1. Zynga's Motion for Summary Judgment No. 1 of Non-Infringement of U.S. Patent No. 7,072,849 under IBM's "Third-Party Advertising" Theory (D.I. 312) is **GRANTED**;
2. Zynga's Motion for Summary Judgment No. 2 of Non-Infringement of U.S. Patent No. 7,072,849 under IBM's "In-App Offers" Theory (D.I. 313) is **DENIED**;
3. IBM's Motion for Summary Judgment #1 for No Anticipation for claims 1 and 13 of U.S. Patent No. 7,072,849 (D.I. 294) by Salomon, Hurly, and the Dreyfus Letter is **GRANTED**. The Motion is otherwise **DENIED**;
4. IBM's Motion for Summary Judgment #2 of No Affirmative Defenses of Prosecution History Estoppel, Collateral Estoppel, Prosecution Laches, Unclean Hands, Waiver,

- and Equitable Estoppel (D.I. 298) is **GRANTED** as to prosecution laches and equitable estoppel, **DENIED** as to prosecution history estoppel, and **DENIED-AS-MOOT** on all other grounds.
5. Zynga's Motion to Preclude the Expert Testimony of Dominic M. Persechini (D.I. 299) is **GRANTED** as to Mr. Persechini's apportionment of pre-fetching and is otherwise **DENIED**;
 6. Zynga's Motion to Preclude the Expert Testimony of Christopher Thompson (D.I. 305) is **GRANTED** as to non-technical willfulness opinions and is otherwise **DENIED**;
 7. IBM's Motion to Exclude Expert Testimony of Mr. Douglas Kidder (D.I. 314) is **GRANTED**;
 8. IBM's Motion to Preclude and Exclude Expert Testimony of Drs. Almeroth and Bennett (D.I. 320) is **DENIED-AS-MOOT** with respect to the opinions of Dr. Almeroth on the "selectively storing" limitation, **GRANTED** with respect to the opinions of Dr. Almeroth on the Salomon reference, **GRANTED** with respect to the opinions of Dr. Bennett on "view-generating logic" and "controller logic," and otherwise **DENIED**.
 9. The Court construes the following claim terms of the U.S. Patent No. 7,072,849 ("the '849 patent") as follows:

'849 patent	
Claim Term	Court's Construction
Structuring advertising Claims 1, 8, 21 Structuring applications Claim 1	formatting advertising/formatting applications

'849 patent	
Claim Term	Court's Construction
Structuring the advertising objects/Structuring applications Claim 13	formatting [applications/the advertising objects]
Configuring the advertising as objects that include advertising data Claim 13	No order required
Selectively storing advertising objects at a store established at the reception system Claims 1 and 13	Pre-fetching advertising objects and storing them at a store established at the reception system in anticipation of display concurrently with the application. The advertising objects must be “prefetched” in the sense that they are retrieved before the user has requested the page in connection with which they are to appear.
A predetermined amount of . . . advertising data Claims 8 and 21	Plain and ordinary meaning; does not include a predetermined number of advertisement units.

The Court is issuing the accompanying opinion under seal, as portions of the parties' briefing were sealed. **IT IS FURTHER ORDERED** that, by no later than September 20, 2024, the parties shall file a proposed redacted version of the accompanying opinion, along with a motion supported by a declaration that contains a clear, factually detailed explanation as to why disclosure of any proposed redacted material would “work a clearly defined and serious injury to the party seeking closure.” *See In re Avandia Mktg., Sales Practices & Prods. Liab. Litig.*, 924 F.3d 662, 672 (3d Cir. 2019) (internal quotations omitted). If the parties do not file a proposed redacted version and corresponding motion by the deadline, or if the Court determines the motion lacks a meritorious basis, the opinion will be unsealed in whole or in part.

GREGORY B. WILLIAMS
UNITED STATES DISTRICT JUDGE